as is well illustrated by the recent decision in *Producers Transport Co.* v. *Railroad Com.* (U. S. Supt. Ct. Jan. 5, 1920), there will always be a judicial review of a statute, or order of a commission, declaring any business public. If the business was solely to serve particular persons, and was never devoted to public use, no legislative fiat, or order of a commission, could possibly make it public.

PUBLIC UTILITY RATES—OBLIGATION OF CONTRACT RULE AS AGAINST THE COMPANY.—A gas company proposed to increase above the rates agreed upon between the city and the company the charge for gas furnished by the company. The company contended that because of conditions occasioned by the World War the present rates caused an actual loss in operation of the plant. The city claimed an irrevocable contract for fifty years, and by ordinance forbade any increase. From denial by the court below of injunction against the city, the company appeals. *Held,* the company is entitled to injunctive relief. *Knoxville Gas Co.* v. *Knoxville,* 261 Fed. 283.

The present note is supplemental to 17 MICH. L. REV. 429 and 18 *ib.* 320. The controlling question in the principal case is whether the city had power by contract irrevocably to fix the price of gas for fifty years. In *Detroit* v. *Detroit St. Ry.,* 184 U. S. 368, and in *Cleveland* v. *Cleveland City Ry.,* 194 U. S. 517, it was almost assumed that municipalities had such power. In *Home Tel. Co.* v. *Los Angeles,* 211 U. S. 265, and later in *Milwaukee* v. *Milwaukee Elec. Ry.* v. *Wis. R. Com.,* 238 U. S. 174, and *Columbus R. R. & L. Co.* v. *Columbus,* 240 U. S. 399, the court sharply restricted this power to cases where the legislature had renounced in favor of the municipality this sovereign right of police power "by terms so clear and unequivocal as to permit of no doubt as to their proper construction." Following this rule the court in the instant case held that the city of Knoxville had no such power, and hence the rates were subject to revision. There are now enough decisions, and the number is growing very fast these days of rising costs, to justify confidence in certain conclusions. As already pointed out, a municipality is a subordinate political subdivision of the state, with no such power unless it has been very clearly, perhaps expressly, given. *State* v. *Burr* (Fla., 1920) 84 So. 61; *Traverse City* v. *R. Com.* (Mich., 1918), 168 N. W. 481. Even when the legislature has permitted the municipality to fix rates, still the legislature is presumed supreme, and in general may itself, or by a utility commission, revise those rates without the consent of the city. *State* v. *Burr* (Fla., 1920) 84 So. 61; *Milwaukee* v. *R. Com.,* P. U. R. 1920 B. 976, 980. But compare *Re Lincoln Water Co.,* P. U. R. 1919 B. 752, 770; *Collingswood Sewerage Co.* v. *Collingswood,* (N. J., 1918) 102 Atl. 901; *Re Petition for Increase of Street Car Fares,* (N. C., 1919) 101 S. E. 619. It has been said the city is a mere agent and the principal and third party may always revise the contract without leave from the agent. But this hardly expresses the fact, for the agent here contracts for his own benefit, and he and not the principal has to pay the cost. Surely a mere agent in such a case has a right to be a party. *State ex rel. Indianapolis T. & T. Co.* v. *Lewis,* (Ind., 1918), 120 N. E. 129. It is

better to rest the rule on the police power of the state, ordinarily exercised by the legislature, and which there is no presumption the legislature has renounced. It may be questioned whether the legislature can renounce it. Clearly the people, through the Constitution might lodge this limited power with the municipalities. *Atlantic Coast Line* v. *Goldsboro,* 232 U. S. 548; *Union Dry Goods Co.* v. *Ga. Pub. Serv. Corp.,* 248 U. S. 372; *Chicago Rys. Co.* v. *Chicago* (Illinois, 1920), 176 N. E. 584; *State* v. *Burr* (Fla., 1920) 84 So. 61; *In Re Guilford Water Co's. Service Rates* (Me., 1919), 108 Atl. 446; *Re Butler-Hill Tel. Co.* (Mo., 1920) P. U. R. 1920 B 604, 615, citing Missouri decisions; *Mill Creek Coal and Coke Co.* v. *Pub. Serv. Com.* (W. Va., 1919), 100 S. E. 557. Arkansas, Ohio, Michigan, Iowa and some other states seem to have statutory or constitutional home rule provisions giving municipalities large power, including this. *Interurban R. & T. Co.* v. *Pub. Utilities Com.* (Ohio, 1918), 120 N. E. 831; *Lima* v. *Pub. Utilities Com.* (Ohio, 1919), 126 N. E. 318; *Conoke* v. *Bransford & Son* (Ark., 1919), 216 S. W. 38; *Selkirk* v. *Sioux City G. & E. Co.* (Ia., 1920), 176 N. W. 301; *Lenawee Co. Gas & E. Co.* v. *Adrian,* (Mich., 1920), 176 N. W. 596, pointing out that the Michigan statute exempts from change by the Commission of contract rates. Cf. *Kalamazoo* v. *Circuit Judge,* 200 Mich. 146, and *Traverse City* v. *R. Com.* (Mich., 1918) 168 N. W. 481, holding no power had been delegated to Traverse City to fix rates. This was followed in *Kalamazoo* v. *Titus* (Mich., 1919), 175 N. W. 480, and in *Detroit* v. *R. Com.* (Mich., 1920), 177 N. W. 306. In most states, however, the legislative power at most is merely suspended, and may again be exercised at any time. *In re Searsport Water Co.* (Me., 1919), 108 Atl. 452; *Re Hackensack Water Co.,* P. U. R. 1920 C. 160. And in many states no such power has ever been given to municipalities. It is never to be presumed. *Chicago Rys. Co.* v. *Chicago* (Illinois, 1920), 126 N. E. 585; *State Pub. Utilities Com.* v. *Quincy* (Illinois, 1919), 125 N. E. 374. And neither private individuals, nor the company can by making contracts for service prevent the exercise by the state of its sovereign power to fix such rates. *Producers' Transportation Co.* v. *R. Com. of Calif.* (U. S., 1920), 40 Sup. Ct. 131; *Union Dry Goods Co.* v. *Ga. Pub. Service Com.,* 248 U. S. 372; *Edison Storage Battery Co.* v. *Pub. Utility Com.* (N. J., 1919), 108 Atl. 241; *Ohio & Colorado Smelting & Refining Co.* v. *Pub. Utilities Com.* (Col., 1920), 187 Pac. 1082; *In Re Guilford Water Co.'s Service Rates* (Me., 1919), 108 Atl. 446; *Biddeford & Saco Water Co.* v. *Itself* (Me., 1920), P. U. R. 1920 B. 586, 590, *Mill Creek Coal & Coke Co.* v. *Pub. Serv. Com.* (W. Va., 1919), 100 S. E. 557. The right of the Commission to change contract rates extends to contracts to furnish the city service free or at reduced rates. *Hillsboro* v. *Pub. Serv. Com.* (Ore., 1920), 187 Pac. 617; *Winfield* v. *Pub. Serv. Com.* (Ind., 1918), 118 N. E. 531. This power in the legislature to regulate rates may extend to utilities owned by the municipality. A recent case held that the statute there involved did not extend to such utilities. *Barnes Laundry Co.* v. *Pittsburgh* (Pa., 1920), 109 Atl. 535. And the many late cases denying the city the benefit of contract fixed rates are a few leaving the city some control. The Virginia Commission refused to authorize an electric company to increase rates above

those fixed in the franchise. *Com. of Va.* v. *Virginia-Western P. Co.*, P. U. R. 1918 F. 791, reviewing many cases and noting their seeming inconsistencies. See also *Jamestown* v. *Pa. Gas Co.*, 263 Fed. 437.

QUASI CONTRACT—PLAINTIFF'S SERVICES RESULTING IN GIFT TO DEFENDANT.—A county let to defendant a contract for construction of a drainage ditch. Under the statutes, the county engineer, with the consent of the auditor, might require extra work, not exceeding ten per cent of the bid. Defendant sublet the whole job to plaintiff, with a stipulation that it would pay plaintiff for extra work "required to be done by the engineer" 9½ cents per yard. The engineer, without the concurrence of the auditor, called for extra work in excess of ten per cent, and plaintiff did this work in ignorance of the engineer's want of authority. The county paid defendant for the extra work $3,152, which was in excess of the ten per cent limitation but considerably short of the value of the work, which, computed on the basis of plaintiff's contract, amounted to $5,589. *Held*, that defendant could not have enforced any payment by the county for the extra work (whether plaintiff could have recovered in quasi contract from the county was not discussed); that defendant's contract with plaintiff obligated defendant to pay only for extra work which the engineer should properly require and for which defendant was entitled to compensation; but that the whole amount paid to defendant for extra work should "in common justice" be paid over to plaintiff. *Seastrand* v. *Foley Co.*, 135 Minn. 5.

After the decision of the foregoing case, the legislature empowered, though it did not require, the county to pay for the extra work, and the county paid to defendant the sum of $4,307. Plaintiff brought another action, claiming only enough to make up the contract price for the extra work. *Held*, that the suit was not barred by the former adjudication because it was based on facts which transpired since the former decision; and that plaintiff was entitled to recover on principles of quasi contract. *Seastrand* v. *Foley Co.* (Minn., 1919), 175 N. W. 117.

These cases, as the court intimated, present a novel problem. In so far as they involve rendition of services in performance of the supposed requirements of a contract, the ground is familiar. Nor is there anything novel in the failure of the defense to make the point that plaintiff must rely on ignorance of law (if he had acted with knowledge of the law there would be but little equity in his case), for the monstrous dogma that everyone is presumed to know the law is fortunately not applied with logical thoroughness. Wherever there is something to mask the fact that the case is bottomed on mistake or ignorance of law, the objection is usually overlooked both by court and counsel. See WOODWARD, QUASI CONTRACTS, 94, 134. The point which appears to have been chiefly urged by the defense, and which turns on the features of the case which are really novel, is this: Since the plaintiff's services were not directly beneficial to defendant, and since they gave defendant no legal right to compensation, it cannot be said in a strict sense that defendant has received anything from plaintiff. This position finds some